

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ADDONES SPENCER,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-13-692-HE
)	
JOHN DOE,)	
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)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff is a federal inmate currently incarcerated at the Beaumont Federal Correctional Complex (BFCC) in Beaumont, Texas. Doc. 1. Plaintiff has initiated a civil rights complaint in this Court alleging that during his confinement at the Federal Transfer Center (FTC) in Oklahoma City, Oklahoma, five unnamed officers were deliberately indifferent to his serious medical needs. *Id.* at 1-4. United States District Court Judge Joe Heaton referred the matter to the undersigned Magistrate Judge for initial proceedings pursuant to 28 U.S.C. § 636(b)(1)(B), (C). Currently at issue is Plaintiff's motion for a preliminary injunction and/or temporary restraining order. Doc. 9. The undersigned recommends that the Court deny the motion.

I. Plaintiff's request for relief.

Plaintiff asks this Court to order BFCC officials to provide the “6 month account information” he needs in order to cure the deficiencies in his application to proceed in forma pauperis. Doc. 9, at 1, 7. He also asks that the Court order BFCC officials not to retaliate against him. *Id.* at 7.

II. Analysis.

The undersigned recommends that the Court deny Plaintiff's request for relief on two grounds.

First, Plaintiff seeks to have the Court bind non-parties. An injunction is only binding “upon the parties to the action . . . , [or] those persons in active concert or participation with them” Fed. R. Civ. P. 65(d). The rule entails proof of “alter ego, collusion, or identity of interest.” *Reliance Ins. Co. v. Mast Constr. Co.*, 84 F.3d 372, 377 (10th Cir. 1996). Plaintiff has not alleged that officers at the FTC in Oklahoma City, Oklahoma are in active concert or participation with officials at the BFCC in Beaumont, Texas.

Second, even if the Court could bind BFCC officials, Plaintiff has asked for relief that is wholly unrelated to the claims in the complaint. As noted above, Plaintiff alleges deliberate indifference to serious medical needs in the complaint. *See* Doc. 1, at 1-4. But, in his motion for injunctive relief he complains about production of documents and potential retaliation. Doc. 9, at 1, 4, 7.

A preliminary injunction grants intermediate relief of the same character as that which may be finally granted. *See De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). Thus, “the movant must establish ‘a relationship between the injury claimed in the party’s motion and the conduct asserted in the complaint.’” *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010) (citation omitted). If he fails to do so, the court is powerless to enter a preliminary injunction. *See Colum v. Winchester*, No. CIV-12-561-HE, 2012 WL 3594804, at *1 (W.D. Okla. June 21, 2012) (“When the movant seeks intermediate relief beyond the claims in the complaint, the court has no authority to enter a preliminary injunction.”) (unpublished recommendation), *adopted*, 2012 WL 3594778 (W.D. Okla. Aug. 21, 2012) (unpublished order).

III. Recommendation and notice of right to object.


For both reasons, the undersigned finds that the Court lacks the authority to enter the requested injunctive relief against BFCC officials and recommends denying Plaintiff’s motion for a preliminary injunction and/or temporary restraining order. Doc. 9.

Plaintiff can object to this report and recommendation. To do so, he must file an objection with the Clerk of this Court by September 25, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that failure to timely object to this report and recommendation

waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation does not terminate the referral to the undersigned Magistrate Judge.

Entered this 5th day of September, 2013.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE